

(o) **Survival of Provisions.** All representations and warranties, duties to indemnify and duties with respect to confidentiality contained herein or made by the parties, and each of them, in connection herewith shall survive termination or expiration of this Agreement indefinitely.

(p) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes any and all other prior or contemporaneous written or oral agreements between the parties with respect thereto. This Agreement may not be amended in any manner unless such amendment is in writing and is signed by duly authorized representatives of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

ECHOSTAR SATELLITE  
LLC

ODS TECHNOLOGIES, L.P.  
D/B/A TVG NETWORK

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: Michael Schwimmer

Print Name: \_\_\_\_\_

Print Title: Sr. Vice President, Programming

Print Title: \_\_\_\_\_

**EXHIBIT A**  
**TELEVISION GAMES NETWORK**  
**LICENSE FEES**

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**1. License Fee:**

- (a) The License Fee shall be \_\_\_\_\_ per Service Subscriber per reporting month, provided that if and for so long as EchoStar complies with the following conditions Network agrees that it shall waive and EchoStar shall have no obligation to pay any License Fee Payments.
- (1) Entering into this Agreement as of as of Programming Distribution Closing Date as defined in that certain Asset Purchase Agreement between, among others, the parties hereto and entered into contemporaneous with this Agreement; and
- (2) Carrying the Service in the Basic Package and the Commercial Basic Package throughout the Term.

**2. Revenue Sharing:**

- (a) Network will pay EchoStar, on a quarterly basis, \_\_\_\_\_ of Gross Fee Revenue attributable to Service Subscribers. Without limiting the generality of the foregoing, Network shall use all commercially reasonable efforts to ensure that all revenues generated from all wagering activities by and through each and every Account Wagering Account established by a Subscriber shall be included in the foregoing
- (b) Network will pay EchoStar, on a quarterly basis, \_\_\_\_\_ of Net Sales Revenue. Where Network is distributed by two (2) or more distributors in a zip code area (Network acknowledges that EchoStar is nationally distributed and available in all zip codes) Network will allocate Net Sales Revenue among distributors on a pro rata basis (based on the percentage of Service Subscribers served by each distributor on a national basis).
- (c) Network will pay EchoStar, on a quarterly basis, \_\_\_\_\_ of Gross Compensation. Network will allocate Gross Compensation among distributors based on the percentage of Service Subscribers served by each distributor on a national basis. Notwithstanding the inclusion of the term Infomercials in the definition of Gross Compensation, Network shall be relieved of its obligation to pay EchoStar the revenue share contemplated in this part 2(c) with respect to Infomercials at all times during the Term subsequent to November 9, 2009 (provided that subject to the most favored nations treatment afforded to EchoStar in Section 12(n) Network shall pay EchoStar a share of Infomercial revenues if Network grants any other distributor a share of such revenues).

**EXHIBIT B**  
**TELEVISION GAMES NETWORK**  
**RESTRICTED TERRITORY**

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**1. RESTRICTED TERRITORY:**

**California**  
**Idaho**  
**Indiana**  
**Kentucky**  
**Louisiana**  
**Maryland**  
**Massachusetts**  
**New Mexico**  
**North Dakota**  
**Ohio**  
**Oregon**  
**Wyoming**

**EXHIBIT C**  
**TELEVISION GAMES NETWORK**  
**RACETRACKS**

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Aqueduct (NYRA)
Arlington Park
Belmont Park (NYRA)
Calder Race Course
Churchill Downs
Del Mar
Ellis Park
Fairplex Park
Hollywood Park
Hoosier Park
Keeneland
Kentucky Downs
Delaware Park
Los Alamitos
Oak Tree @ Santa Anita
Oaklawn
Prairie Meadows
Ruidoso Downs
Saratoga (NYRA)
Turf Paradise
Turfway Park
Sam Houston Race Park
Balmoral Park
Beulah Park
Canterbury Park
Delta Downs
Dover Downs
Evangeline Downs
Fair Grounds
Louisiana Downs
Maywood Park
Mountaineer Park
Northfield Park
Sunland Park
Retama Park
California Authority of Racing Fairs
Capitol Racing at Cal Expo

Hawthorne Race Course

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**EXHIBIT D**  
**TELEVISION GAMES NETWORK**  
**PROGRAMMING SCHEDULE**

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**REFERENCE ATTACHED**



January 6, 1900	January 5, 1900	January 4, 1900	January 3, 1900	January 2, 1900	January 1, 1900	January 31, 1900	January 30, 1900	January 29, 1900	January 28, 1900	January 27, 1900	January 26, 1900	January 25, 1900	January 24, 1900	January 23, 1900	January 22, 1900	January 21, 1900	January 20, 1900	January 19, 1900	January 18, 1900	January 17, 1900	January 16, 1900	January 15, 1900	January 14, 1900	January 13, 1900	January 12, 1900	January 11, 1900	January 10, 1900	January 9, 1900	January 8, 1900	January 7, 1900	January 6, 1900	January 5, 1900	January 4, 1900	January 3, 1900	January 2, 1900	January 1, 1900	December 31, 1900	December 30, 1900	December 29, 1900	December 28, 1900	December 27, 1900	December 26, 1900	December 25, 1900	December 24, 1900	December 23, 1900	December 22, 1900	December 21, 1900	December 20, 1900	December 19, 1900	December 18, 1900	December 17, 1900	December 16, 1900	December 15, 1900	December 14, 1900	December 13, 1900	December 12, 1900	December 11, 1900	December 10, 1900	December 9, 1900	December 8, 1900	December 7, 1900	December 6, 1900	December 5, 1900	December 4, 1900	December 3, 1900	December 2, 1900	December 1, 1900	November 30, 1900	November 29, 1900	November 28, 1900	November 27, 1900	November 26, 1900	November 25, 1900	November 24, 1900	November 23, 1900	November 22, 1900	November 21, 1900	November 20, 1900	November 19, 1900	November 18, 1900	November 17, 1900	November 16, 1900	November 15, 1900	November 14, 1900	November 13, 1900	November 12, 1900	November 11, 1900	November 10, 1900	November 9, 1900	November 8, 1900	November 7, 1900	November 6, 1900	November 5, 1900	November 4, 1900	November 3, 1900	November 2, 1900	November 1, 1900	October 31, 1900	October 30, 1900	October 29, 1900	October 28, 1900	October 27, 1900	October 26, 1900	October 25, 1900	October 24, 1900	October 23, 1900	October 22, 1900	October 21, 1900	October 20, 1900	October 19, 1900	October 18, 1900	October 17, 1900	October 16, 1900	October 15, 1900	October 14, 1900	October 13, 1900	October 12, 1900	October 11, 1900	October 10, 1900	October 9, 1900	October 8, 1900	October 7, 1900	October 6, 1900	October 5, 1900	October 4, 1900	October 3, 1900	October 2, 1900	October 1, 1900	September 30, 1900	September 29, 1900	September 28, 1900	September 27, 1900	September 26, 1900	September 25, 1900	September 24, 1900	September 23, 1900	September 22, 1900	September 21, 1900	September 20, 1900	September 19, 1900	September 18, 1900	September 17, 1900	September 16, 1900	September 15, 1900	September 14, 1900	September 13, 1900	September 12, 1900	September 11, 1900	September 10, 1900	September 9, 1900	September 8, 1900	September 7, 1900	September 6, 1900	September 5, 1900	September 4, 1900	September 3, 1900	September 2, 1900	September 1, 1900	August 31, 1900	August 30, 1900	August 29, 1900	August 28, 1900	August 27, 1900	August 26, 1900	August 25, 1900	August 24, 1900	August 23, 1900	August 22, 1900	August 21, 1900	August 20, 1900	August 19, 1900	August 18, 1900	August 17, 1900	August 16, 1900	August 15, 1900	August 14, 1900	August 13, 1900	August 12, 1900	August 11, 1900	August 10, 1900	August 9, 1900	August 8, 1900	August 7, 1900	August 6, 1900	August 5, 1900	August 4, 1900	August 3, 1900	August 2, 1900	August 1, 1900	July 31, 1900	July 30, 1900	July 29, 1900	July 28, 1900	July 27, 1900	July 26, 1900	July 25, 1900	July 24, 1900	July 23, 1900	July 22, 1900	July 21, 1900	July 20, 1900	July 19, 1900	July 18, 1900	July 17, 1900	July 16, 1900	July 15, 1900	July 14, 1900	July 13, 1900	July 12, 1900	July 11, 1900	July 10, 1900	July 9, 1900	July 8, 1900	July 7, 1900	July 6, 1900	July 5, 1900	July 4, 1900	July 3, 1900	July 2, 1900	July 1, 1900	June 30, 1900	June 29, 1900	June 28, 1900	June 27, 1900	June 26, 1900	June 25, 1900	June 24, 1900	June 23, 1900	June 22, 1900	June 21, 1900	June 20, 1900	June 19, 1900	June 18, 1900	June 17, 1900	June 16, 1900	June 15, 1900	June 14, 1900	June 13, 1900	June 12, 1900	June 11, 1900	June 10, 1900	June 9, 1900	June 8, 1900	June 7, 1900	June 6, 1900	June 5, 1900	June 4, 1900	June 3, 1900	June 2, 1900	June 1, 1900	May 31, 1900	May 30, 1900	May 29, 1900	May 28, 1900	May 27, 1900	May 26, 1900	May 25, 1900	May 24, 1900	May 23, 1900	May 22, 1900	May 21, 1900	May 20, 1900	May 19, 1900	May 18, 1900	May 17, 1900	May 16, 1900	May 15, 1900	May 14, 1900	May 13, 1900	May 12, 1900	May 11, 1900	May 10, 1900	May 9, 1900	May 8, 1900	May 7, 1900	May 6, 1900	May 5, 1900
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## Program Descriptions



### Trackside Live

Trackside Live, TVG's flagship program, is a fast moving show that takes viewers to the best racetracks across America for great racing action. Tune in for racing action from legendary tracks such as Churchill Downs, Hollywood Park, Belmont Park, Arlington Park and Pimlico in addition to expert analysis and information provided by TVG's team of hosts and analysts live from our Los Angeles studios.

### Starting Gate

Get wall-to-wall racing action on Mondays and Tuesdays with the Starting Gate.

### Night Games

Let the games begin with great racing action on Night Games every Monday and Tuesday evening.

### The Quarters

If you love speed, you will love The Quarters - TVG's late night programming brought to you on-location from Los Alamitos racetrack featuring the best Quarter Horse racing, interviews, analysis, special contests and fun every Wednesday through Sunday. Follow all of the action with TVG's Quarter Horse experts.

### Replay Shows

Lights, camera, action! TVG takes you trackside at Aqueduct during a special edition of Trackside Live!

Lights, camera, action! TVG takes you trackside at Keeneland and Aqueduct during a special edition of Trackside Live!

Catch all of the action from the previous day's races at your favorite track!

### Paid Programming

Paid Programming

### The Finish Line

"In Training: Behind The Sales" is an exciting and drama-charged two-part documentary on the behind-the-scenes action of the Two-Year-Olds in Training Sales. Parts one and two will air back to back.

Watch The Finish Line on Sunday night and never miss out on any weekend stakes racing action again! TVG's one hour program features replays of major stakes races, national racing recaps, interviews and reactions, industry news, originally produced features, special guests and previews of upcoming events. Away from the racetrack, The Finish Line also keeps you up to date on bloodstock news and sales coverage.

## EXHIBIT H

### TV GUIDE CHANNEL AFFILIATION AGREEMENT

This Agreement ("Agreement") is made as of the Programming Distribution Closing Date as defined in that certain Asset Purchase Agreement between, among others, the PARTIES hereto and entered into contemporaneous with this Agreement (the "Effective Date"), by and between TV Guide Networks, Inc. ("Programmer"), a corporation organized under the laws of the State of Delaware, whose principal place of business and chief executive offices are located at 6922 Hollywood Boulevard, 12<sup>th</sup> Floor, Hollywood, California 90028, and EchoStar Satellite LLC ("Affiliate"), a corporation organized under the laws of the State of Colorado, whose principal place of business is located at 9601 South Meridian Boulevard, Englewood, Colorado 80112. Programmer and Affiliate may sometimes be individually referred to as a "party" or collectively referred to as the "parties."

#### WHEREAS:

A. Affiliate has established a multi-channel video television service in North America;

B. Affiliate desires to obtain and programmer desires to grant Affiliate the rights to distribute "TV Guide Channel<sup>SM</sup>" (the "Service," as more fully described in Section 1(b) below which term shall, for the avoidance of doubt, include any component and/or part thereof including, without limitation, all interactive components, graphic scrolls or other visual graphics and all portions of the VBI (or its digital equivalent) and any commercial advertising that airs on the Service) using the Distribution System (as defined in Section 1(a)(iii) below) in the United States, its territories and possessions (the "Territory") (provided that notwithstanding the foregoing definition, Programmer understands and agrees that the Service signal when transmitted from a satellite by Affiliate may extend beyond the geographic boundaries of the Territory and that such "spill-over", in and of itself, shall not constitute a breach of this Agreement); and

C. Affiliate is experienced in pay television industry, and in the business of offering, marketing and authorizing receipt of various programming services and maintains facilities for that purpose.

#### NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

##### 1. General Terms and Conditions of Carriage.

###### (a) Grant of Rights, Certain Definitions.

(i) Programmer hereby grants to Affiliate (which as used for all purposes in this Agreement shall mean Affiliate and/or its designees and Affiliated

Companies (as defined in Section 7(a) below)) the nonexclusive right (which right shall include, without limitation, the requisite license to all copyright, trademark and other intellectual property rights appurtenant the programming content that makes up the Service) to distribute the Service in the Territory using the Distribution System to EchoStar Subscribers (as defined below in Section 1(a)(iii)) for viewing using televisions, personal computers or other reception devices along with all other distribution platforms and technologies whether now existing or hereafter developed during the Term (as defined in Section 5(a) below) hereof. Additionally, subject to the restrictions set forth in Section 3(f) below, Affiliate shall have the right to use the names, titles or logos of the Service or any of Programmer's programs, or the names, voices, photographs, music, likenesses or biographies of any individual participant or performer in, or contributor to, any program or any variations thereof to advertise and promote the Service as distributed on the Distribution System.

(ii) In addition to and without limiting the generality of the foregoing grant of rights, Affiliate shall have the right to (A) receive the Service at a Broadcast Center (as defined in Section 1(c)(ii) below) and to digitize, compress and/or otherwise technologically manipulate the signal for the Service and then transmit the signal, as modified, using the Distribution System (B) to advertise, promote, publicize, market and sell subscriptions to the Service (and/or the Service as bundled with other programming services) in the Territory pursuant to the terms and conditions contained herein (which right for the avoidance of doubt shall extend to Affiliate's retail distribution network) (C) transport and arrange for the transport of the signal of the Service as necessary to exercise the rights granted to Affiliate hereby, including, without limitation, cable operators (both franchised and non-franchised), MMDS systems, SMATV systems, L-Band systems and privately owned networks (such transport rights shall, for the avoidance of doubt, include the right to transport to third parties who obtain rights to distribute and display the Service independent of Affiliate) and (D) sub-distribute or otherwise sub-license and re-sell the Service via any technology to and through third parties, including, without limitation, aggregators, private cable operators and telecommunication service providers that serve gated residential communities, multiple dwelling unites, colleges and universities and housing cooperatives and/or other similar properties.

(iii) The term "Distribution System" shall mean the multichannel distribution system for video and other programming services utilizing transmission systems which are owned, operated, leased, controlled, managed or otherwise accessed by Affiliate (for clarity, the parties agree and acknowledge that such systems may include, without limitation, all forms of audio video distribution technology, terrestrial cable of any kind, satellite, microwave, wireless Internet, 3G technology and/or any other form or method of distribution technology (including, without limitation, Alternative Distribution Means (as defined in Section 1(g) below)) either now existing or hereafter developed). "EchoStar Subscribers" shall mean those customers intentionally authorized by Affiliate to receive programming using the Distribution System, including, without limitation, each residence, office, hotel, motel, hospital room or commercial establishment. "Residential Service Subscriber" shall mean any Echostar Subscriber that is intentionally authorized by Affiliate to receive the Service in a single family residence (which, for clarity may be a part of a multiple

dwelling until). "Commercial Service Subscriber" shall mean any Echostar Subscriber that is intentionally authorized by Affiliate to receive the Service at a commercial location, including, but not limited to communal living facility cooperative and/or association, place of public accommodation business location or free to guest facility. Without limiting the generality of the foregoing, the parties agree that the term Commercial Service Subscriber may include, by way of example but not limitation, bars, restaurants, dormitories, condominiums, long term care facilities, apartment complexes, town-homes, gated communities, airplanes, marinas, prisons, airports, casinos, health clubs, office complexes and individual offices within offices complexes, hotels, motels RV parks and campgrounds. "Service Subscribers" shall mean all EchoStar Subscribers (including Residential Service Subscribers and Commercial Service Subscribers) who are intentionally authorized by Affiliate to receive and who actually receive the Service from the Distribution System. For clarity, the term Commercial Service Subscriber may also refer to sub-distributes (in accordance with the sub-distribution and re-sale rights granted to Affiliate herein).

(iv) Subject to the rights and licenses granted hereby, and any rights Affiliate may obtain independent of Programmer, Affiliate shall not, without Programmer's prior written approval, use the names, titles or logos of the Service or any of its programs, or the names, voices, photographs, likenesses or biographies of any individual participant or performer in, or contributor to, any program or any variations thereof. The restrictions set forth in this Section 1(a)(iv) shall apply only to the extent they are applied by Programmer uniformly with respect to all of its distributors of the Service (for clarification, in accordance with the Most Favored Nations Provisions contained in Section 19 of this Agreement).

(v) Except as authorized hereby, Affiliate shall not, without Programmer's consent, knowingly authorize or cause or knowingly permit any portion of the Service to be recorded, duplicated, cablecast, exhibited or otherwise used (except on a videocassette recorder or other home or personal taping device for private, noncommercial use by Service Subscribers) for any purpose other than for distribution by Affiliate (or Affiliate's sub-distributes in accordance with the sub-distribution and re-sale rights granted to Affiliate herein). Notwithstanding the foregoing, Programmer specifically acknowledges that Affiliate is in the business of manufacturing digital video recording devices and agrees that the distribution of such devices by Affiliate and use of such devices by Service Subscribers shall not constitute a breach of this Agreement.

(b) The Service.

(i) Service Description. At all times during the Term, the Service shall be a twenty four (24) hour seven (7) day per week professionally-produced, advertiser-supported, programming service that consists of video programming with primarily original content (which, for purposes of clarification, may include "clips" of programming offered by the Distribution System to Subscribers, so long as all such "clips" are integral to and only a part of a longer program or show contained in the Service that provides guidance to Subscribers as to program offerings available on the Distribution System) dedicated to editorial guidance and information about or related to television programming and/or

entertainment news (which shall include by way of example, but not limitation, clips, infotainment magazines and feature segments all as more specifically described below). Such video programming shall conform in all material respects to the programming schedule attached hereto as Exhibit A, which is incorporated herein. The Service shall, at all times during the Term, be comprised of at least thirty (30) minutes per hour (with the exception of those hours dedicated to Infomercials (i.e. between 2:00 a.m. and 11:00 a.m. Eastern Standard Time as fully described below in Section 1(b)(v)(A)) of such content described above, and shall not contain any commercial advertising of any kind whatsoever (including, without limitation, commercial advertising time (as described in Section 1(b)(v)(C)), Avails, direct on air sales programming (as described in Section 1(b)(v)(B)) and/or Infomercial programming). Additionally, the Service shall also include a graphic screen display which provides viewers with guide information relating to the television programming that airs on the Distribution System. Specifically, the Service shall have two distinct portions from the viewer's perspective. The lower portion of the screen (the "Lower Portion") shall provide the above referenced graphic screen display, while the upper portion of the screen (the "Upper Portion") shall contain video programming in accordance with the first three (3) sentences of this Section 1(b)(i) (for clarity, the Upper Portion shall comprise approximately seventy-five percent (75%) of the viewing screen provided that such percentage may vary to an immaterial degree with changes to the Lower Portion).

(ii) Limitation on Distribution Obligation. Notwithstanding anything to the contrary contained herein, Affiliate's distribution obligation hereunder is limited to the Upper Portion of the Services. Affiliate's distribution of the Lower Portion shall be at Affiliate's sole and exclusive option. If Affiliate elects to distribute solely the Upper Portion, Programmer shall ensure that the Upper Portion is viewable as a full screen video programming channel in accordance with industry standards for full time video programming on pay television platforms.

(iii) Lower Portion Development. Programmer shall develop a graphic screen display and guide information for the Lower Portion which meets Affiliate's commercial needs as such needs are determined in the sole discretion of Affiliate. Programmer shall work with Affiliate in good faith and at Programmer's reasonable expense to develop a Lower Portion which is unique to the Distribution System in accordance with Affiliate's commercial and technical requirements. For clarity, Programmer acknowledges that it is responsible (at Programmer's sole expense) for ensuring that the Lower Portion is operationally compatible with the middleware technology used by Affiliate (as such technology may change from time to time in Affiliate's sole discretion, provided that Affiliate shall provide Programmer with commercially reasonable notice of any such change). Additionally, Affiliate may from time to time and in its sole discretion require changes to the Lower Portion and Programmer shall effectuate such changes in accordance with time schedules mutually agreed to between the parties (Programmer may not unreasonably withhold, qualify, or delay its agreement to any such schedule). Notwithstanding the obligation created in the foregoing sentence, Affiliate acknowledges that if Programmer incurs (or is projected to incur) documented, material incremental out of pocket development expenses as a result of any such change, the parties will negotiate in good faith with respect

to sharing such expenses and ownership of any technical developments which result therefrom. Affiliate may, in its sole discretion, insert in the Lower Portion of the Service promotional or informational announcements regarding the programs that air on the Distribution System and other products and services provided or offered by Affiliate (which promotional information may also include, by way of example, but not limitation, third parties that make up Affiliate's retail distribution network). Programmer shall make any tools, technology, features, functionality, or applications that it provides to other distributors as part of the Lower Portion (or any other part of the Service including, without limitation, any portion of the VBI (or its digital equivalent)) available to Affiliate (for clarification, in accordance with the Most Favored Nations Provision contained in Section 19 of this Agreement).

(iv) Service Restrictions. Notwithstanding anything to the contrary herein, the Service shall not contain (A) any home shopping programming; (B) any promotions or advertisements for any other multi-channel video programming distributor or other entity that competes with Affiliate in the distribution of television programming services; (C) any promotions or advertisements for any other cable programming service (including any such programming service affiliated or associated with Programmer) unless Affiliate distributes such Service using the Distribution System; (D) any "calls to action" or similar messages, prompts or triggers with respect to information embedded in or around the signal of the Service except as consented to by Affiliate in writing. Additionally, Programmer shall not engage in "nesting" (whether or not for the express purpose of inducing subscriptions to) a cable programming service by "showcasting" a branded block of programming from such service within the Service, which such "showcasting" shall be deemed a means to promote or advertise such service; (E) any content which disparages the Distribution System (and/ or any component part thereof), Affiliate or any Affiliated Company of Affiliate. Programmer agrees that the Service will not air any promotional spot (whether alone or in conjunction with any other person) which advertises any other method of video distribution offers not available on the Distribution System. Affiliate shall have the right to preempt all material that it deems in its reasonable discretion to be violative of the foregoing. At all times during the Term, the programming on the Upper Portion of the Service as delivered to Affiliate shall be the same as the programming delivered by Programmer to all other distributors and received by all other subscribers to the Service. If it is not, then Affiliate shall have the unconditional right to receive and distribute (at no extra cost whatsoever, all additional expense to be paid by Programmer) the programming included in the Service as Programmer is providing to other subscribers in the Territory. Affiliate shall have the right hereunder to distribute any and all additional feeds of the Service (including, without limitation, any additional time zone feeds or any SAP feed) at no additional cost. Any Service Subscriber receiving multiple feeds of the Service shall be counted as only one (1) Service Subscriber for all purposes. Programmer shall not "black out" any Service programming and the Service shall not include any programming for which Programmer seeks a surcharge fee. Programmer further agrees that it will not use the Service to nest or incubate another cable television programming service within the Service, nor will it "clone" the Service into a second cable television programming service by migrating programming from the Service to any such second service which is distributed by

Programmer in the Territory.

(v) Advertising Covenants.

(A) Infomercials. Programmer and Affiliate agree that "Infomercials," defined as program-length direct sales commercials or programming, including, but not limited to, "sponsor-owned promotional programming," shall relate only to family-oriented issues and products. Anything herein to the contrary notwithstanding, Infomercials shall only be broadcast during the period from 2:00 a.m. to 11:00 a.m. (Eastern time zone), which Programmer represents and warrants is the actual times that Infomercials are broadcast on the Service as of the date hereof. Affiliate shall not have the right to pre-empt such Infomercials or receive any portion of the revenues from Infomercials; provided that if any other distributor pre-empts and/or receives revenues with respect to Infomercials, then Affiliate shall have the same rights (for clarity, in accordance with the Most Favored Nations Provisions contained in Section 19 of this Agreement). Programmer represents and warrants that to its knowledge, based upon reasonable inquiry, no other distributor (i) currently is or has in the past pre-empted (i.e., inserted substitute commercial programming in lieu of such Infomercials) or (ii) currently is or has in the past received revenues with respect to Infomercials, and that, with respect to both (i) and/or (ii), Programmer shall inform Affiliate if it becomes aware of any other distributor inserting substitute commercial programming in lieu of any Infomercial, and/or receiving revenues from Infomercials, at which time this Agreement shall be deemed amended to permit Affiliate to pre-empt Infomercials and/or receive revenues therefrom, as applicable. Programmer agrees to provide a certification of compliance with respect to the foregoing upon written request by Affiliate.

(B) Direct On-Air Marketing. If Programmer conducts any direct on-air marketing and sale of products and/or services, Programmer will provide Affiliate with lists of the names and identifying information such as address and phone number of respondents to such direct on-air marketing and sales (subject to all applicable privacy laws and Programmer's privacy policies and practices) and shall pay to Affiliate of Net Sales (as hereinafter defined) on all merchandise and services sold in connection with such direct on-air marketing and sales. Where such sales are made to customers residing in a zip code area where there are two (2) or more distributors of the Service (at least one of which is Affiliate), Programmer shall allocate Net Sales between or among such distributors based on the percentage of subscribers to the Service that are served by each such distributor in the zip code area. Programmer acknowledges and agrees that Affiliate distributes the Service in all zip codes throughout the Territory. "Net Sales" shall mean gross sales less taxes, fees, returns, freight-out and cash discounts. Programmer shall maintain true and accurate books and records relating to its compliance with this Section 1(b)(v)(B) and Affiliate shall have the reciprocal audit rights afforded to Programmer pursuant to Section 2(a) of this Agreement.

(C) Commercial Advertising and Advertising Avails. The Service shall not contain more than thirty (30) minutes per hour of commercial advertising time (including, without limitation, all forms of "advertainment" programming, and

traditional television commercial advertisements and, which, for clarification, includes direct on air marketing as set forth in Section 1(b)(v)(B) above). Programmer shall make (i) ten (10) minutes per hour of such commercial advertising time available to Affiliate during the hours of 11:00 a.m. through 2:00 a.m. (Eastern Standard Time) each day during the Term, and (ii) two (2) minutes per hour of such commercial advertising time available to Affiliate during the hours of 2:00 a.m. through 11:00 a.m. (Eastern Standard Time) each day during the Term (such available time set forth in (i) and (ii) shall be defined as "Avails"). Affiliate shall have the right to use such Avails in its sole and exclusive option and control (including, without limitation, for use in promoting programming that airs on the Distribution System or the sale of commercial advertising time to third parties). Without limiting the foregoing, Affiliate shall be entitled to at least the same number of minutes of commercial advertising time on the Service as any other distributor (for clarity, in accordance with the Most Favored Nations Provisions contained in Section 19 of this Agreement). All Avails shall be evenly distributed in all material respects throughout each and every hour of the Service and shall not occur between the actual or apparent end of one program and the actual or apparent beginning of another program. Affiliate shall have the right to retain for itself all of the proceeds derived from the sale of Avails. If the total amount of commercial announcement time on the Service (including time allocated to Affiliate hereunder) increases after the date hereof, Affiliate shall have the right to terminate this Agreement (subject to a forty five (45) day cure period; provided that if such increase is less than two (2) minutes, Programmer shall only have thirty (30) days to cure) or at Affiliate's sole discretion and election, the Avails shall increase by fifty percent (50%) of such increase (e.g. if Programmer increases the total amount of commercial announcement time on the Service by sixty (60) seconds, Affiliate will receive thirty (30) seconds of such additional commercial announcement time). The same election shall apply to each increase of commercial announcement time. Programmer shall properly "tone switch" all Avails using equipment which is technically compatible with the equipment used by Affiliate (using inaudible signals known as cue tones). Programmer shall make all reasonable accommodation requested by Affiliate with respect to ad insertion during the Avails. Affiliate shall be solely responsible for all materials inserted by Affiliate within the Service, and, subject to Section 7, shall fully indemnify and hold Programmer harmless from and against any and all claims and costs arising out of or related to the content of Affiliate's Avails pursuant to this paragraph. Affiliate agrees that it shall not provide any commercial or other announcements which do not comply with federal regulation which is applicable to Affiliate. The Avails inserted by Affiliate into the Service shall not contain any material that is obscene or defamatory or violates the rights of any party, including without limitation, contractual rights, intellectual property rights, the rights of privacy or publicity, copyright, trademarks, service marks, dramatic performance, musical performance, or musical synchronization, or literary right of any person or party, or any other applicable rule, regulation, or law. Programmer shall maintain true and accurate books and records relating to its compliance with this Section 1(b)(v)(C) and Affiliate shall have the reciprocal audit rights afforded to Programmer pursuant to Section 2(a) of this Agreement.

(vi) If Affiliate, in good faith, determines that the Service includes programming prohibited by this Section 1(b) and/or does not include programming of at least the quantity, quality, type and content as required by this Section 1(b) (except that Affiliate



shall be responsible for the content inserted into the Service by Affiliate) (a "Content Deviation"), Affiliate shall provide Programmer with written notice stating the basis for such Content Deviation. If such Content Deviation has not been cured to Affiliate's reasonable satisfaction within thirty (30) days from the date Affiliate provided such notice, Affiliate shall have the right to at its sole option to (A) discontinue distribution of the Service; and/or (B) preempt the deviating and/or prohibited programming; and/or (C) receive credit against any moneys due to Programmer or any of its Affiliated Company(ies) (including, without limitation, License Fees, as that term is defined below in Section 2(b), whether or not such License Fee is actually payable by Affiliate) under this Agreement in the proportion that the hours (or portion thereof) of programming each day which is either prohibited or deviates from the programming required herein bears to twenty-four (24) hours.

(vii) Programmer shall provide Affiliate with an annual written certificate of compliance or non-compliance (as the case may be) of this Section 1(b) signed by an officer of the company within thirty (30) days of the last day of each calendar year during the Term, or upon written request by Affiliate at any other time during the Term. Additionally, Programmer shall provide Affiliate with notice if any other distributor of the Service makes an allegation which would, if proven true amount to a breach of this Section 1(b).

(viii) Programmer acknowledges that compliance with the provisions this Section 1(b) are material to this Agreement, and that any remedial measure specified herein is bargained for, not as a penalty, but rather as a reasonable allocation of damages which would otherwise be difficult to ascertain. Any remedy specified herein shall be in addition to and not in limitation of any other rights or legal or equitable remedies Affiliate may otherwise have.

(c) Other Distribution Obligations.

(i) Subject to Programmer's obligations and Affiliate's rights hereunder, Affiliate shall distribute the Service as transmitted by Programmer, in its entirety, in the order and at the time transmitted by Programmer without any intentional and willful editing, delays, alterations, interruptions, deletions or additions, excepting Affiliate's commercial or other announcements, as permitted by Section 1(b)(vi)(C) of this Agreement, and any insertions and/or deletions permitted hereby. Programmer acknowledges that the Distribution System requires and applies digital compression and encryption processes prior to transmission and decryption and decompression processes upon reception and agrees that such processing does not constitute an alteration and/or other modification of the Service. Provided that such manipulation does not materially degrade the Service as distributed on the Distribution System, Network shall not interfere with Affiliate's ability to digitize, compress and/or otherwise technologically manipulate the signal of the Service. Programmer shall encrypt the signal of the Service utilizing encryption technology commonly used in the pay television industry and shall authorize Affiliate to receive and decrypt the signal for the Service.

(ii) Programmer shall deliver to Affiliate at the Broadcast Centers the national feed of the Service (or, if Programmer uses multiple feeds for the Service, such feed designated by Affiliate in Affiliate's sole discretion). Programmer shall, at its sole expense, deliver the feed of the Service from a U.S. domestic communications satellite commonly used for transmission of television programming in the Territory (or, at Programmer's option and expense, a fiber optic or other facility reasonably acceptable to Affiliate) to each of Affiliate's uplink and broadcast facilities or such other facilities as determined by Affiliate (collectively, the "Broadcast Centers"). In connection with the foregoing, Programmer shall, at its sole cost and expense at all times during the Term, provide Affiliate with two receivers and decoders which are technically compliant with the Distribution System and capable of receiving the Service for each of the Broadcast Centers. Programmer shall have in place appropriate back-up transponder space on a second domestic communications satellite, or shall reserve back-up fiber link to the Broadcast Centers, such that in the event of a failure of the first satellite or fiber link, delivery of the Service to Affiliate shall not be interrupted or discontinued. In the event Programmer seeks to change (A) the primary delivery mechanism from which the Service is delivered at any time during the Term (B) the technology used by Programmer to encrypt the Service to a technology not compatible with Affiliate's then-existing descrambling equipment, or (C) compresses, digitizes or otherwise modifies the signal of the Service in a manner that is likely to cause technical difficulty, Programmer shall provide Affiliate with not less than one hundred and twenty (120) days' prior written notice of such proposed change and, in the event Affiliate approves such proposed change, Programmer shall provide Affiliate with the necessary equipment required to receive the Service, using the new delivery method and reimburse Affiliate for the reasonable expenses associated with installing and testing such equipment. In addition to the foregoing, Programmer agrees and acknowledges that any such new transmission methodology, encryption or compression technology shall be of a type which is commonly used for the delivery of television programming in the Territory and must be receivable by the Broadcast Center designated by Affiliate. If Programmer fails to comply with the foregoing technology change provisions, Affiliate shall have the right to delete or discontinue carriage of the Service (subject to a ten (10) day cure period from the day Affiliate provides Programmer notice of such failure).

(iii) Programmer and Affiliate shall use their respective commercially reasonable efforts to maintain for the Service a high quality of signal transmission in accordance with their respective technical standards and procedures, provided that nothing contained in the foregoing shall be construed to require Affiliate to distribute the Service in a manner which is different than it distributes other programming services similarly situated. Programmer agrees to include closed-captioning and/or narrative audio of the audio portion of the Service as delivered by Programmer to Affiliate in a manner sufficient to allow Affiliate to comply with any closed-captioning and/or narrative audio obligations as may be imposed upon Affiliate or Programmer by FCC (or other governmental) rules and regulations during the Term; as modified from time to time. Other than as required pursuant to the immediately preceding sentence, Affiliate shall have no liability in connection with Programmer's failure to prepare, insert or include closed-captioning and/or narrative audio in the Service as required by this Section 1(c) (iii). Accordingly, Programmer shall indemnify, defend and hold harmless Affiliate, as provided in

Section 7 hereof, against and from any and all losses, liabilities, claims, costs (including without limitation, any costs of preparing and including closed-captioning and/or narrative audio in the Service), damages and expenses, including without limitation, fines, forfeitures, attorneys' fees, disbursements and court or administrative costs, arising out of Programmer's breach of this Section 1(c).

(iv) Service Equipment. Programmer, at its sole cost, shall provide to Affiliate and replace as and when necessary a primary and backup piece of equipment for each of the items specified as set forth in 1(c)(iv)(F)(1) and (2) below (the "Service Equipment") on the terms and conditions as set forth in (A) through (F) below.

(A) Delivery of Service Equipment. Programmer will deliver the Service Equipment to Affiliate's Broadcast Centers. Programmer reserves the right (at its sole discretion) to replace, upgrade, or modify the Service Equipment, at its own expense, to provide any enhancement to the Service or new features made available within the Service to Affiliate during the Term of this Agreement, provided that Programmer shall provide Affiliate with at least thirty (30) days notice of any such changes and provided further that any such replacement shall be at times of Affiliate's choosing and shall not in any way disrupt Affiliate's operations or the delivery of the Service.

(B) Installation and Installation Costs. Installation, and/or removal of Service Equipment and all costs related to installation and/or removal, including any tariffs or taxes, shall be the exclusive responsibility of Programmer and Programmer shall reimburse Affiliate therefore upon demand. The location and positioning of the Service Equipment shall be at the sole discretion of Affiliate, and Programmer specifically agrees and acknowledges that the primary and backup systems shall be completely isolated from each other.

(C) Risk of Loss. Programmer agrees that all Service Equipment entrusted to the care and use of Affiliate shall become the sole and exclusive property of Affiliate until such time as the Service Equipment is returned to Programmer in accordance with this 1(c)(iv). Affiliate shall be responsible for all risk of loss of the Service Equipment, including, without limitation, any loss, theft, or damage, to Service Equipment while in the care and possession of Affiliate or under its control. Affiliate shall not connect or add any additional equipment (the "Peripheral Equipment") to the Service Equipment without Programmer's prior consent. Affiliate will reimburse Programmer for any damages caused to Service Equipment due to any Peripheral Equipment added or connected to the Service Equipment without Programmer's consent.

(D) Return of Equipment. Upon termination or expiration of this Agreement, ~~or if the Service Equipment requires upgrades or replacement,~~ Programmer shall remove all then existing Service Equipment within thirty (30) days following the termination, expiration or replacement date.

(E) Programmer responsibilities. Programmer shall at its own cost:

(1) not require Affiliate to connect the Service Equipment to any other equipment or service other than required to receive the Service and to deliver the Service to Service Subscribers in accordance with Affiliate's standard practices; and

(2) timely deliver and remove all Service Equipment necessary to provide the Service; timely deliver replacement Service Equipment upon request and maintain the Service Equipment at all times during the Term.

(F) The Service Equipment shall include all of the following in (1) and (2):

(1)

SERVICE EQUIPMENT	QUANTITY
UNIT	
Patch Panel w/power supply	1
TV Guide Channel Manual	1
PC Control Unit w/ software loaded and power cord	1
Keyboard w/ trackball	1
Rack Rails and screws	2
Keyboard Drawer	1

(2)

IRD:	18" x 14" x 3-1/4"	2 rack units tall
PC:	19" x 26" x 12-1/4"	7 rack units tall
Weight:	60 lbs	
A rack depth of 30" is recommended.		

(d) Program Guide. During the Term, Programmer, at its sole cost and expense, shall provide the daily programming schedule for the Upper Portion of the Service (including any Infomercials contained therein) to Tribune Media Service or such other program schedule provider as identified by Affiliate in order that Affiliate may access the program schedule for purposes of its on-screen program guide. Programmer agrees to

provide such information in accordance with all reasonable timing requirements specified by Affiliate or Affiliate's designee as such requirements are determined by Affiliate from time to time in its sole discretion.

(e) Signal. In no event shall Affiliate be obligated to transmit more than the primary video and a single stereo pair of primary audio programs along with all materials applicable law requires Affiliate to transmit. Programmer reserves and retains all rights in and to all signal distribution capacity contained within the bandwidth of the signal of the Service, including without limitation, the VBI (and/or its digital equivalent) and audio subcarriers from its transmission point to the Broadcast Center(s). Affiliate retains and reserves any and all rights in and to, and may use in its sole discretion, all signal distribution capacity contained within the bandwidth of the signal of the Service, including, without limitation, the VBI (and/or its digital equivalent) and audio subcarriers, from the Broadcast Centers to the Service Subscribers in the Territory. Programmer agrees that it shall not embed any material or information into or around any portion of the signal for the Service that cannot be removed and/or blocked by the Distribution System using equipment then-existing and available at the Broadcast Centers (which blocking is expressly permitted hereunder and, in respect of which, Programmer agrees to provide Affiliate such reasonable assistance and information as Affiliate may request). Subject to the rights (and the limitations thereon) provided to Programmer in Section 3(e)(ii) in the License and Distribution Agreement and Patent License Agreement of even date herewith and of which this Agreement is an exhibit to (the "Patent License Agreement") Programmer further agrees that it shall not embed any material, information, data, images, sounds or features into or around any portion of the signal which would impede, interfere with or degrade the function of any hardware, software, firmware or any other equipment or devices then in use by Affiliate. Programmer represents and warrants that, it is not currently engaged in any undisclosed embedding with respect to the Service and agrees that it shall provide Affiliate with ninety (90) days' advance written notice (or such shorter time as is practicable under the circumstances) of its intention to embed any information in or around the signal prior to commencement of such embedding, which notice shall describe with specificity the information Programmer intends to so embed and the technical placement of such information within the signal of the Service. Further, Programmer agrees that after commencement of its embedding of any information in or around the signal it shall provide one hundred twenty (120) days' advance written notice (or, if shorter, the maximum length of time that is practicable under the circumstances) of its intention to change any of the information embedded in or around the signal of the Service and/or the technical placement of such information within the signal. For clarity, the parties agree and acknowledge that Affiliate shall have the right (but not the obligation) to distribute all data, information or other materials included in the VBI (and/or its digital equivalent) along to Service Subscribers as part of the Service.

(f) On-Screen Logos. It is understood and agreed that Affiliate may superimpose a logo or "bug" in a corner of the screen identifying Affiliate over the programming of the Service; provided that Affiliate's bug shall appear only intermittently during any portion of the Service, and provided further that Affiliate shall not delete the

Service's own promotion bug or its on-screen graphics.

(g) Internet Restrictions. Programmer agrees that in no event shall it or any Affiliated Company(ies) thereof exhibit, distribute or "stream" (including, without limitation, on a time delayed, simulcast or other basis) or permit or authorize any third party (with the exception of Affiliate) to exhibit, distribute or "stream" (including, without limitation, on a time delayed, simulcast or other basis) the Service or any portion of the Service, or any programming comprising a portion of the Service using the "Internet", any online service, or any broadband, wireline or wireless service, or over any local or wide area computer network, including, without limitation, in multimedia, interactive, three dimensional or other augmented or enhanced format (collectively, "Alternative Distribution Means"), whether for a fee or otherwise; provided, however that notwithstanding the generality of the foregoing, Affiliate acknowledges and agrees that Programmer shall be permitted to distribute or to authorize the distribution of limited portions of the Service or segments of programming comprising a portion of the Service for promotional purposes only ("Promotional Excerpts"), in the above manner, subject at all times during the Term to the following restrictions: (i) each Promotional Excerpt shall be no more than five (5) minutes in duration; (ii) no more than four (4) Promotional Excerpts in any twenty-four (24) hour period shall be comprised of content from the same program; and (iii) Promotional Excerpts shall not exceed an aggregated total duration of sixty (60) minutes in any twenty-four (24) hour period. Any web-site used or otherwise authorized by Programmer to distribute or stream Promotional Excerpts of the Service in accordance with the foregoing shall be subject to the same restriction on advertising contained in Section 1(b)(iv) of this Agreement; provided, however, that any such web-site may contain information with respect to multi-channel video programming distributors or other entities that compete with Affiliate so long as Affiliate is positioned in a manner and with the same frequency, such that Affiliate is not competitively disadvantaged in any way, and Affiliate approves such advertising of any such competing multi-channel video programming distributor in advance, which approval shall not be unreasonably withheld.

(h) Programmer agrees that (for clarity, in accordance with the Most Favored Nations Provisions contained in Section 19 of this Agreement) it shall offer to Affiliate any VOD, HDTV, ITV or other similar content that is offered through or originating from the Service on terms and conditions that are as good as or more favorable than the terms and conditions under which any such material is offered or provided to any other distributor of the Service.

(i) Subject to the grant of rights contained herein, all rights and title in and to the entire contents of the Service, including, but not limited to, films and recordings thereof, title or titles, names, trademarks, concepts, stories, plots, incidents, ideas, formulas, formats, general content and any other literary, musical, artistic, or other creative material included therein shall, as between Programmer and Affiliate, remain vested in Programmer.

## 2. Reports and Payments.

(a) Reports; Payments; Audit Rights. Regardless of whether Affiliate is required to pay Programmer License Fee (as defined below) hereunder, within forty-five (45) days after the end of each calendar month during the Term during which a reporting period ends, Affiliate shall furnish Programmer a statement containing the number of Service Subscribers, as calculated by Affiliate as the average of the total number of Service Subscribers during the reporting period (the "Monthly Subscriber Level"). The average number of Service Subscribers shall be calculated by taking the sum of (i) the number of Service Subscribers as of the last day of the reporting period in question; and (ii) the number of Service Subscribers as of the last day of the immediately preceding reporting period, then dividing the sum of (i) and (ii) by two (2). For the purposes of this Agreement, reference to a "reporting period" shall mean the period of time between the 22nd day of one calendar month and the 21st day of the following calendar month, as such period may change from time to time in Affiliate's sole judgment. Programmer shall accord confidential treatment to any information contained in the aforementioned statement in accordance with Section 14 of this Agreement. At Programmer's request, Affiliate shall permit Programmer's representatives to review, during the Term (no more than once each calendar year) and for one (1) year after the end of the Term and on a one-time basis, such EchoStar Subscriber records as reasonably required for the sole purpose of verifying only statements that cover periods during which Affiliate paid Programmer License Fees. Programmer agrees and acknowledges that such records shall not exceed the scope of records provided to other programmers similarly situated for such periods. Such review shall be at reasonable times, upon reasonable advance written notice and during normal business hours at Affiliate's offices. Any third party auditors retained by Programmer shall be a certified public accountant (subject to Affiliate's reasonable approval) and shall sign a non-disclosure agreement acceptable to Affiliate prior to engaging in any audit. Such review shall be conducted during reasonable business hours and in such manner as not to interfere with Affiliate's normal business activities and shall not continue for more than seven (7) consecutive days. Programmer's representative shall not have the right to examine or inquire into any matters or items which are embraced by or contained in any such statement after the expiration of eighteen (18) months from and after the date of mailing of such statement, and such statement shall be final and conclusive upon Programmer upon the expiration of such eighteen (18) month period notwithstanding that the matters or items embraced by or contained therein may later be contained or referred to in a cumulative statement pertaining to more than one accounting period. Such cumulative statement shall not be subject to audit by Programmer to the extent the material contained therein was first reflected on a statement submitted more than eighteen (18) months prior to the date of mailing of such cumulative statement. Programmer shall be forever barred from maintaining or instituting any action or proceeding based upon, or in any way relating to, any matters that are embraced by or reflected on any statement rendered hereunder, or the accuracy of any item appearing therein, unless written objection thereto shall have been delivered by Programmer to Affiliate within eighteen (18) months after the date of mailing of the statement on which such transaction or items was first reflected and unless such action or proceeding is commenced within eighteen (18) months after delivery of such written objection and Programmer hereby expressly waives any claim to the contrary. Programmer may not commence a new audit until all prior audits have been closed (i.e., after such closure is confirmed in writing by Programmer) and the results have been presented to Affiliate. If Programmer shall audit Affiliate's books and

records, then Programmer shall, within sixty (60) days of the conclusion of such audit, inform Affiliate in writing of any claim resulting therefrom (including a true copy of any third party audit, and, except for the claims set forth in such notice, all statements rendered by Affiliate with respect to the period covered by such audit shall be conclusive and binding on the parties and not subject to further audit. The information derived from and the process of such review shall be subject to the confidentiality provisions of Section 14 of this Agreement. Any audit conducted under this Section 2(a) shall be at Programmer's sole cost and expense, except that if such audit reveals an underpayment in excess of ten percent (10%) and such finding is not subject to the bona fide dispute of Affiliate, then Affiliate shall promptly reimburse Programmer for its reasonable, actual and documented, third party costs of such audit.

(b) License Fees.

(i) Within forty five (45) days of the end of the calendar month during the Term in which a reporting period ends, Affiliate shall pay to Programmer a "License Fee" (as good and valuable consideration in addition to the monies paid pursuant to the Patent License Agreement) equal to \_\_\_\_\_ per Service Subscriber. Notwithstanding the foregoing or anything to the contrary herein, for any reporting period during which (A) Affiliate carries the Service in its most widely distributed package or tier of programming services (currently "AT60"), or (B) the Monthly Subscriber Level exceeds \_\_\_\_\_ of the total number of Echostar Subscribers, excluding Non-Basic Echostar Subscribers (as defined below) in any given reporting period, then, in the case of (A) and/or (B), Programmer shall waive, and Affiliate shall not be obligated to pay or owe any License Fees attributed to such reporting period. Programmer agrees and acknowledges that in any event, the distribution of the Service on commercial airplanes shall be free from License Fees of any kind. "Non-Basic Echostar Subscribers" shall mean, non basic EchoStar Subscribers as determined by Affiliate which include, without limitation, all Commercial Subscribers, EchoStar Subscribers who do not receive a basic package of programming services (i.e., AT60, AT120 and AT180 or any successor package of programming services of AT60, AT120 and AT180), and EchoStar Subscribers who utilize a DISH 300 antenna.

(ii) CPI. Beginning January 1, 2005, and annually thereafter, the License Fee payable hereunder shall be subject to an adjustment in an amount equal to the annual percentage increase or decrease, if any, in the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, during the then-immediately-preceding twelve (12) month period.

(c) Late or Non-Payments. Any amounts that are not subject to a bona fide dispute by Affiliate and not paid by Affiliate after (i) the date payment is due pursuant to the first sentence of Section 2(a) and (ii) ten (10) days after Affiliate's receipt of written notice from Programmer of such failure by Affiliate, shall accrue interest at the rate of \_\_\_\_\_ per month compounded monthly or at the highest lawful rate, whichever shall be the lesser, from the date such amounts were due until they are paid.



(d) Bulk Billing. Affiliate shall have the right to calculate License Fees on a bulk-rate basis with respect to distribution of the Service to (i) Subscribers that receive the Service from the Distribution System via a third party distributor ("Sub-distributor(s)") and/or (ii) any location containing multiple sites such as rooms, units, seats, televisions, etc. at which the Service may be received at such multiple sites within the location, including, without limitation, multiple dwelling facilities, hotels, motels (and other places offering temporary residence), commercial offices (including private aircraft), hospitals and other healthcare facilities, university dormitories, prisons, commercial buses, commercial ships, trains and oil rigs (each a "Bulk-Rate Facility(ies)") in accordance with the following: The number of Service Subscribers attributable to each such Bulk-Rate Facility and/or Sub-distributor shall be equal to the monthly retail rate the Bulk-Rate Facility and/or Sub-distributor is charged for the Service or for the package of services in which the Service is distributed, *divided by* the residential monthly retail rate a non-bulk rate Service Subscriber is charged for the Service or for such package of services; provided, however, in no event will the number of Service Subscribers calculated for any such complex exceed the actual number of occupied dwelling units receiving the Service in such complex. Notwithstanding anything contained herein to the contrary, Affiliate reserves the right to calculate the number of Service Subscribers with respect to Subscribers that receive the Service via a Sub-distributor on the basis of actual units receiving the Service.

(e) Notwithstanding anything contained herein to the contrary, the number of Service Subscribers for any reporting month shall not include (i) employees of Affiliate who are not charged for the Service (ii) public officials, administrative personnel or public buildings that are not charged for the Service (iii) retail outlets that receive the Service without charge for promotional exhibition purposes (iv) Service Subscribers who have not paid the amount which they are required to pay for the level of service or package of services on which the Service is distributed and who, as a result, have, as of the last day of the reporting period, delivery of such level of service or package of services to them is subject to termination or de-authorization and (v) any test site used by Affiliate for testing or marketing display. For clarity, the parties agree and acknowledge that any Service Subscriber who receives the Service either through more than one (1) distribution technology from Affiliate and/or any of its Affiliated Company(ies), or on more than one tier, level or package of programming services, shall be included in the Service Subscriber count as only one (1) Service Subscriber.

### 3. Packaging, Marketing and Promotion.

#### (a) Launch and Packaging.

(i) Launch. Provided that Programmer fully satisfies its obligations hereunder, and subject to successful testing on the Distribution System, Affiliate shall use commercially reasonable efforts (taking into account any operational constraints that the parties may encounter in connection with Affiliate's expedited launch of the Service) to commence distribution of the Service over its Distribution System for revenue-generating purposes (the "Service Commencement Date") no later than sixty (60) days following the